

**ORIGINAL**

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION

DVI BUSINESS CREDIT CORPORATION  
Successor-In-Interest to MEDCAPITAL  
FUNDING I CORPORATION

Plaintiff

v.

CARMEN SANTIAGO, an individual,  
GUAYNABO HOME CARE PROGRAM,  
INC., a Texas corporation, C&L  
ESPARANZA HOME HEALTH, INC., a  
Texas corporation, CC HOME HEALTH  
LUBBOCK, a Texas corporation,  
CUIDADO CASERO HOME HEALTH OF  
EL PASO, INC., a Texas corporation,  
CUIDADO CASERO HOME HEALTH OF  
OKLAHOMA CITY, a Texas corporation,  
CUIDADO CASERO HOME HEALTH  
CENTRAL, INC., a Texas corporation

Defendant

CASE NO. Disc. 88-88888

Adv. No. 03-4455

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
DEC 19 2003
CLERK, U.S. DISTRICT COURT
By _____ Deputy

**4-03 CV 1466-A**

**DEFENDANTS' BRIEF IN SUPPORT OF  
MOTION TO WITHDRAW REFERENCE**

COME NOW, Defendants Carmen Santiago, Guaynabo Home Care Program, Inc., C&L  
Esparanza Home Health, Inc., CC Home Health Lubbock, Cuidado Casero Home Health of El  
Paso, Inc. and Cuidado Casero Home Health Central, Inc., in the above-styled and numbered  
cause of action, and files this Defendants' Brief In Support of Motion To Withdraw Reference,  
and for same would respectfully show unto the Court the following:

DEFENDANTS' BRIEF IN SUPPORT OF  
MOTION TO WITHDRAW REFERENCE

I hereby certify that the foregoing is a  
true copy of the original thereof now in  
my office this the 19th day of December Page 1  
2003 at Ft. Worth Texas  
Tawana C. Marshall, Clerk  
United States Bankruptcy Court  
Northern District of Texas

By Deanne Johnson Deputy

1. The Supreme Court in *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 109 S.Ct.2782, 106 L.Ed. 2d 26 stated that a Defendant has a right to a jury trial whether the cause of action is a core or non-core proceeding and specifically dealt with a right to a jury trial to recover alleged fraudulent transfers. The Court recognized the right of the Seventh Amendment to the U.S. Constitution wherein there is a right to a jury trial for all cases arising out of common law. Pursuant to Plaintiff's Original Complaint filed in U. S. Bankruptcy Court, Northern District of Texas, Fort Worth Division, the causes of action alleged against Defendants are for breach of contract, conversion, breach of fiduciary duty, suit on security interest, unjust enrichment, suit on guaranty and punitive damages, all pursuant to Texas common law. As a matter of law, Defendants have a right to a jury trial on all issues, whether core or non-core or otherwise related.

2. Pursuant to 28 U.S.C. §157(e), the Bankruptcy Judge may conduct a jury trial only with express consent of all parties. Defendant has not consented to the Bankruptcy Court conducting a jury trial in the adversary case. As a result, pursuant to 28 U.S.C. §157(d), good cause for withdrawal of reference has been given.

3. It is obvious that the claims are for damages in a monetary amount and it is clear that the Seventh Amendment of the U. S. Constitution allows for a trial by jury on state law claims. The present adversary case is one for monetary damages. Defendants are not creditors of Plaintiff, and have not filed a Proof of Claim or otherwise appeared in the bankruptcy matter.

Defendants pray that this Motion To Withdraw Reference be, in all things, GRANTED.

Respectfully submitted,

BY: 

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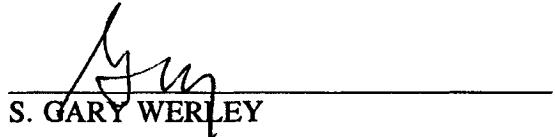
**ATTORNEY FOR DEFENDANTS**  
**CARMEN SANTIAGO, GUAYNABO HOME**  
**CARE PROGRAM, INC., C&L ESPARANZA**  
**HOME HEALTH, INC., CC HOME HEALTH**  
**LUBBOCK, CUIDADO CASERO HOME**  
**HEALTH OF EL PASO, INC., CUIDADO**  
**CASERO HOME HEALTH CENTRAL, INC.**

**CERTIFICATE OF SERVICE**

This is to certify that on this the 16<sup>th</sup> day of December, 2003, a true and correct copy of *Defendants' Brief In Support Of Motion to Withdraw Reference* was served upon counsel of record  
Via U.S. First Class Mail as reflected below:

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